

# **NOTICE OF PROPOSED RULEMAKING**

## **TITLE 15. CRIME PREVENTION AND CORRECTIONS DIVISION 2. BOARD OF PAROLE HEARINGS (formerly known as "Board of Prison Terms") CHAPTER 1. GENERAL ARTICLE 5. INDIVIDUAL CASE DECISIONS**

### **AMENDMENT TO SECTION 2041 REVIEW OF PROPOSED DECISIONS RN 07-04**

**NOTICE IS HEREBY GIVEN** that the Board of Parole Hearings (board) proposes to amend Title 15, Division 2, California Code of Regulations (CCR) section 2041 subsection (h) concerning review of life prisoner parole decisions.

#### **AUTHORITY AND REFERENCE**

Pursuant to the authority vested by Government Code section 12838.4 and Penal Code sections 3052 and 5076.2, and to implement, interpret and/or make specific Penal Code sections 1170.2, 2964, 2966, 3041, 3060, 3063.5, 3063.6, 5075 and 5076.1, the board is considering changes to CCR Title 15 section 2041 subsection (h).

#### **PUBLIC HEARING**

The board has not scheduled a public hearing on this proposed regulatory action. However, the board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

#### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the board. **THE WRITTEN COMMENT PERIOD ON THIS PROPOSED REGULATORY ACTION WILL COMMENCE ON OCTOBER 12, 2007, AND WILL CLOSE AT 5:00 P.M. ON NOVEMBER 26, 2007.** In order for the comments to be considered by the board, they must be submitted in writing (by mail, fax or e-mail) to the board's Contact Person identified in this Notice no later than the close of the comment period.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code section 3041(b) authorizes the board to review the panel's decisions relating to parole.

Title 15 CCR section 2041 subsection (h) currently provides that proposed parole suitability decisions made at hearings for life prisoners shall be reviewed by the chief counsel or designee.

Pursuant to the Inspector General's (IG) 2007 follow up audit, the IG reiterated the importance of establishing the review criteria for decisions granting and denying parole to life prisoners.

In this regulatory action, the board proposes to amend its regulatory provision pertaining to the process by which the board will review life parole suitability decisions. In particular, the proposed amendment requires that the chief counsel or designee review all grants of parole and a random sampling of denials of parole as specified by the board. This process will ensure that quality control standards are consistently met.

Government Code § 12838.4 vests the Board of Parole Hearings with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the former Board of Prison Terms and Narcotic Addict Evaluation Authority, which no longer exist.

Penal Code § 3052 vests with the board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go on parole outside of prison when eligible for parole.

Penal Code § 5076.2 authorizes the board to promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

## DISCLOSURES REGARDING THE PROPOSED ACTION

**Local Mandates:** The board has determined that the proposed action imposes no mandate upon local agencies or school districts.

**Fiscal Impact Statement:** The board has made the following initial determinations:

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: **None**
- Cost or savings to any state agency: **None**
- Other non-discretionary cost or savings imposed on local agencies: **None**
- Cost or savings in federal funding to the state: **None**

**Significant Statewide Adverse Economic Impact on Business:** The board has determined that there is no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

**Cost Impacts on Representative Private Persons or Businesses:** The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Assessment of Effects on Job and/or Business Creation, Elimination or Expansion:** The board has determined that adoption of this regulation will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing business within California; or (3) affect the expansion of businesses currently doing business within California.

**Effect on Housing Costs:** The board has made an initial determination that the proposed action will have no significant effect on housing costs.

**Small Business Determination:** The board has determined that the proposed regulation does not have a significant adverse economic impact on small business because small businesses are not affected by the internal management of State prisons.

## **CONSIDERATION OF ALTERNATIVES**

The board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested parties are accordingly invited to present statements or arguments with respect to any alternatives to the proposed changes during the public comment period.

## **CONTACT PERSON**

Please direct requests for copies of the Initial Statement of Reasons, the proposed amended text of the regulation, or other information upon which the rulemaking is based to:

Devaney Sullivan, Regulations Coordinator  
Board of Parole Hearings  
PO Box 4036  
Sacramento, CA 95812-4036  
Telephone: (916) 322-6815  
Facsimile: (916) 445-4086  
E-mail: [Devaney.Sullivan@cdcr.ca.gov](mailto:Devaney.Sullivan@cdcr.ca.gov)

In any such inquiries, please identify the action by using the board's regulation control number RN 07-04.

**Note:** In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above: Elizabeth Geiger at (916) 324-6434 or [Elizabeth.Geiger@cdcr.ca.gov](mailto:Elizabeth.Geiger@cdcr.ca.gov).

## **AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS**

The board will make the rulemaking file available to the public throughout the rulemaking process at its offices located at 1515 S Street, Suite 600, Sacramento, California. As of the date this Notice is published in the Office of Administrative Law's Notice Register, the rulemaking file consists of this Notice, Form 400 (Notice of Submission of Regulations), the proposed text of the regulation, Initial Statement of Reasons and Form 399 (Fiscal Impact Statement). Copies of these documents may be obtained by contacting the board's Contact Person at the address or phone number listed above or by visiting the board's Web site at:

[http://www.cdcr.ca.gov/Divisions\\_Boards/BOPH/reg\\_revisions.html](http://www.cdcr.ca.gov/Divisions_Boards/BOPH/reg_revisions.html)

## **AVAILABILITY OF CHANGES TO PROPOSED TEXT**

After considering all timely and relevant comments received, the board may adopt the proposed regulations substantially as described in this Notice. If the board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the board adopts the regulations as revised. Please send requests for copies of any modified regulation text to the attention of the Contact Person identified in this Notice or by visiting the board's Web site at [http://www.cdcr.ca.gov/Divisions\\_Boards/BOPH/reg\\_revisions.html](http://www.cdcr.ca.gov/Divisions_Boards/BOPH/reg_revisions.html). The board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained from the board's Regulation Coordinator or by visiting the board's Web site at:

[http://www.cdcr.ca.gov/Divisions\\_Boards/BOPH/reg\\_revisions.html](http://www.cdcr.ca.gov/Divisions_Boards/BOPH/reg_revisions.html)

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